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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
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7 ASHTON WOODS HOLDINGS L.L.C., et
8 al.,

9 Plaintiffs,

10 v.

11 USG CORPORATION, et al.,

12 Defendants.

Case No. [15-cv-01247-HSG](#)

**ORDER GRANTING RENEWED
MOTION TO SEAL**

Re: Dkt. No. 72

13 Plaintiffs filed a renewed motion to file under seal portions of two of the three exhibits that
14 were the subject of Plaintiffs' previous motion to seal. Dkt. No. 72. For the reasons articulated
15 below, the Court **GRANTS** the motion.

16 **I. LEGAL STANDARD**

17 Courts generally apply a "compelling reasons" standard when considering motions to seal
18 documents. *Pintos v. Pac. Creditors Ass'n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Kamakana*
19 *v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). "This standard derives from the
20 common law right 'to inspect and copy public records and documents, including judicial records
21 and documents.'" *Id.* (quoting *Kamakana*, 447 F.3d at 1178). "[A] strong presumption in favor of
22 access is the starting point." *Kamakana*, 447 F.3d at 1178 (quotations omitted). To overcome this
23 strong presumption, the party seeking to seal a judicial record attached to a dispositive motion
24 must "articulate compelling reasons supported by specific factual findings that outweigh the
25 general history of access and the public policies favoring disclosure, such as the public interest in
26 understanding the judicial process" and "significant public events." *Id.* at 1178–79 (quotations
27 omitted).

28 Records attached to nondispositive motions must meet the lower "good cause" standard of

1 Rule 26(c) of the Federal Rules of Civil Procedure, as such records “are often unrelated, or only
 2 tangentially related, to the underlying cause of action.” *Id.* at 1179–80 (quotation omitted). This
 3 requires a “particularized showing” that “specific prejudice or harm will result” if the information
 4 is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210–11 (9th
 5 Cir. 2002); *see also* Fed. R. Civ. P. 26(c). “Broad allegations of harm, unsubstantiated by specific
 6 examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966
 7 F.2d 470, 476 (9th Cir. 1992) (quotation omitted).

8 **II. DISCUSSION**

9 On October 13, 2020, Defendants requested leave to file a motion for reconsideration of
 10 the MDL Court’s summary judgment ruling on choice of law. Dkt. No. 59. Plaintiffs previously
 11 filed an administrative motion to file documents under seal in connection with Defendants’ motion
 12 for leave to move for reconsideration. Dkt. No. 61. Specifically, Plaintiffs sought to file under
 13 seal the entirety of the summary judgment briefs, Exhibits 1-3 to the Declaration of Diane
 14 Doolittle. *See* Dkt. No. 61-4 (Ex. 1); Dkt. No. 61-5 (Ex. 2); Dkt. No. 61-6 (Ex. 3). The Court
 15 denied Plaintiffs’ motion because Plaintiffs failed to narrowly tailor their requests to only cover
 16 the portions of the exhibits that refer directly to confidential and proprietary business information.
 17 Dkt. No. 71. Plaintiffs now file a renewed motion seeking to seal select portions of Defendant’s
 18 Opening Summary Judgment Brief and Plaintiff’s Opposition Brief. Dkt. No. 72. Because
 19 Plaintiffs move to file documents related to Defendants’ motion to reconsider the MDL court’s
 20 summary judgment ruling, the Court will apply the “compelling reasons” standard.

21 The Court finds that Plaintiffs have narrowly tailored their requests to only cover the
 22 portions of the exhibits that refer directly to confidential and proprietary business information, or
 23 sensitive personally identifiable information. As to Defendant’s Opening Summary Judgment
 24 Brief, Plaintiffs move to seal a single image that “details the ways in which Plaintiffs . . .
 25 purchased wallboard, through what entities, and where.” *Id.* at 4. The public release of this
 26 information could give non-party competitors an unfair advantage. *See In re Elec. Arts, Inc.*, 298
 27 F. App’x 568, 569 (9th Cir. 2008) (ordering sealing where documents could be used “as sources
 28 of business information that might harm a litigant’s competitive standing”) (quoting *Nixon v.*

1 *Warner Commc 'ns, Inc.*, 435 U.S. 589, 598 (1978)). As to Plaintiffs' Opposition Brief, Plaintiffs
2 move to seal two phone numbers associated with Defendants' employees. *Id.* The Court also
3 finds that compelling reasons exist to seal this potentially sensitive identifying information. *See*
4 *Am. Auto. Ass'n of N. California, Nevada & Utah v. Gen. Motors LLC*, No. 17-CV-03874-LHK,
5 2019 WL 1206748, at *2 (N.D. Cal. Mar. 14, 2019) (ordering sealing where documents contained
6 "personally identifiable information of third-party individuals, including" phone numbers).

7 **III. CONCLUSION**

8 Because the Court finds that Plaintiffs have established compelling reasons to seal the
9 limited portions of the exhibits, Plaintiffs' renewed motion to file under seal is **GRANTED**. The
10 Court **DIRECTS** Plaintiffs to file redacted versions of these documents on the public docket
11 within seven days of this order.

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13 **IT IS SO ORDERED.**

14 Dated: 2/8/2021

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16 HAYWOOD S. GILLIAM, JR.
17 United States District Judge
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United States District Court
Northern District of California